IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.
WRIT PETITION NO.2884 OF 1989

Shri Dinkar Mura Mandavekar-Pawar,
since deceased through his heirs
and legal representatives:- Petitioners
1A) Shri Uttam Dinkar Pawar and ors ..

Vs

1. Shri Vishnu Balkrishna Kale,
2. Shri Govind Gopal Kale,
since deceased by his heirs and legal
representatives:
A. Shri Shridhar Govind Kale and ors. Respondents.

Mr U.B.Nighot, for the petitioner.
Mr P.B.Shah, for respondent no.1.
None for respodnent nos 2A to 2E, though served.

CORAM : D.B.BHOSALE,J.
DATE : 18.08.2006

ORAL JUDGMENT :

1. This petition under Article 227 of the Constitution of India is directed against the concurrent findings recorded by the authorities below in the proceedings under section 32-G of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short, "the Act").

2. The original petitioner-Dinkar Mura Mandavekar claimed to be the heir and legal representative of the original tenant Mura Narayan Mandavekar, who died in 1979. Dinkar Mura Mandvekar died pending this petition and, therefore, his heirs were brought on record. The case set up by Dinkar Mura Mandavekar was that his

father was a tenant in survey no.520/3 and 520/4, admeasuring 1 hector and 21 Ares, situated at village Tarale, Taluka Patan, District-Satara, (for short, "the suit land") on the tiller’s day and that he was willing to purchase the said land. The proceedings under section 32G of the Act were accordingly initiated in 1963 and since the suit land was Inam land, they were delayed and ultimately disposed of vide order dated 22.11.1983 passed by the Addl. Tahasildar and A.L.T.Patan. By the time the proceedings were disposed Dinkar Mura Mandavekar was brought on record as the legal heir and representative of deceased-tenant Mura Mandavekar, who died in 1979.

. The name of Dinkar Mura Mandavekar was entered in 7/12 extracts for the first time in 1982-83 and as a result of which the Addl. Tahasildar took a view that there was nothing on record to show that Dinkar Mura Mandavekar was also the tenant in the suit land on the tiller’s day and since his tenancy was created after 1.4.1957 he ought to have exercised his right of purchase under section 32-O of the Act within the time prescribed thereunder.

. In the appeal by Dinkar Mura Mandavekar the Sub Divisional Officer affirmed the findings recorded by the

Tahasildar vide his order dated 21.3.1986. The Tahasildar and the Sub Divisional Officer both have categorically observed in their orders that admittedly the grand father of the petitioners was the tenant on the tiller's day and since the land was Inam land, after it was abolished, the Government was shown in Kabjedar column of the record of rights and, therefore, the tenant could not become a deemed purchaser on the tiller's day. It was then observed that the suit land was regranted after 1.4.1957 and therefore the tenant ought to have exercised his right of purchase under section 32-O of the Act and since he failed to do so he had lost his right in the suit land.

. The matter was further carried by Dinkar Mura Mandavekar in revision before the Maharashtra Revenue Tribunal. The Maharashtra Revenue Tribunal also affirmed the findings recorded by the authorities below holding that there is no material on record to show that Dinkar Mura Mandavekar was the tenant in the suit land on the tiller's day and he had failed to exercise his right under section 32-O of the Act.

3. It is against this backdrop Dinkar Mura Mandavekar has approached this Court by way of the present petition. It is well settled that while

exercising supervisory jurisdiction under Article 227 of the Constitution, the High Court is not expected to convert itself into a Court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inference or correct errors of mere formal or technical character. Supervisory jurisdiction is normally exercised in the cases where error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and grave injustice or gross failure of justice has occasioned thereby. This is settled by the Apex Court in 2003 AIR SCW 3872 - Suryadev Rai Vs. Ramchadnra Rai and ors. In my opinion, the present case is one such case where the impugned orders passed by the authorities below are based on clear ignorance or utter disregard of the provisions of law and gross failure of justice has occasioned thereby. The errors committed by the authorities below are manifest and apparent on the face of the proceedings and in view thereof I am left with no alternative but to interfere with the concurrent findings recorded by the authorities below, and I now proceed to record reasons for the same.

4. Mr Nighot, learned counsel for the petitioners, at the outset, invited my attention to the observations

made by the Tahasildar and the Sub-Divisional Officer in their orders and on the basis thereof submitted that it is crystal clear that the father of Dinkar Mura Mandavekar was the tenant in the suit land for more than 60 years and was in possession thereof on 1.4.1957. There is no dispute that the land was Inam land and it was regranted in favour of the landlords in 1958-59. The relevant observations in the order of the Tahasildar read thus:

> ".... It is seen from the Extracts of V.F.B. VII-XII of the suit lands for the year 1957-58 that the names of Mura Nayaran Mandavekar and Vishnu Balkrishna Kale are entered in the column of Kul and Khand under Reet 3. The extract's for the year 1982-83 shows that the names of Dinkar Mura has been entered int column of Kul and Khand. The entry is in pencil. The entry shows that the Talathi failed to follow the proper procedure prescribed, under Land Revenue Code and Rules thereunder. He should have submitted his report in form No.XIV to the Tahasildar as provided in the Land Revenue Code and Rules. Thereunder, it is thus quite clear that the Opponent was not a tenant in the suit land on tillers day i.e. on 1st April 1957 and he is not deemed purchaser of the suit land it appears that his name might have been entered after tiller's day in that case he should have exercised his right of purchase under Section 32-O of the Act. ... ..."

Similarly, the observations in the order of Sub Divisional Officer may also be noticed, which read thus:

> "... ... It is an admitted fact that the appellant is a tenant and the land was in his possession as a tenant".
>
> ... ... It is an admitted fact that the suit land was of Inam Class-V. This Inam class was abolished and the name of the Government was entered in Kabjedar Column above the line. Therefore, the appellant cannot be a deemed purchaser as on the tillers day i.e. on 1.4.1957. The suit land was regranted after 1.4.1957 i.e. on about 1958-59 there is no dispute about these facts. .. .."

Mr Shah, learned counsel for the respondent no.1-landlord in support of the aforesaid findings, submitted that after the death of the original tenant Mura Mandavekar, there is nothing on record to show that Dinkar Mura Mandvekar had inherited the tenancy and was entitled to purchase the land under section 32-G. The revenue record clearly shows that his name was entered in the 7/12 extracts for the first time in 1982-83 and that too it was a provisional entry. In view thereof, he further submitted that the authorities below were right in observing that Dinkar Mura Mandavekar ought to have exercised his right to purchase under section 32-O of the Act within the time stipulated and since he did not do so, has lost right in the property. Mr Shah then submitted that even if it is assumed that Dinkar Mura Mandavekar

inherited the tenancy from his father after his death, the entire proceedings stood abated long back since admittedly the heir of co-landlord Govind Gopal Kale, who died in 1969, no steps were taken by the tenant for bringing his heirs on record. This shows that the proceedings under section 32-G were conducted against the dead person and since this proceedings abated against Govind Gopal Kale, the deceased landlord, the proceedings also stood abated against the respondent-landlord (Vishnu Balkrishna Kale).

5. All the three authorities below have committed grave error of law in holding that Dinkar Mura Mandavekar, after the death of his father, who was admittedly the tenant in the suit land, ought to have exercised his right of purchase under section 32-O of the Act and since he has failed to do so within the time stipulated he had lost the right of purchase. Admittedly, the father of Dinkar Mura Mandavekar was the tenant in the suit land and this fact had not been disputed either before the authorities below or even before me by the learned counsel for the respondent-landlord. It was submitted that the tenancy was not inherited by Dinkar Mura Mandvekar after the death of the original tenant Mura Narayan

Mandavekar. I perused the record and in particular the mutation entry 6533, which was certified on 6.10.1977. By that M.E.6533 the name of Dinkar Mura Mandavekar was entered in the record of rights as a head of the family after the death of Mura. The revenue record shows that this entry was not objected to by the landlord at any point of time. As a matter of fact, from the contents of the order it cannot be inferred that the status of Dinkar Mura Mandavekar as tenant was ever challenged by the landlord. The revenue authorities seem to have drawn the aforesaid inference on the basis of the fact that 7/12 extracts for the year 1957-58 were not showing the name of Dinkar Mura Mandvekar as tenant in the suit land. The name of Dinkar Mura Mandavekar was entered in 7/12 extracts in 1982-83 i.e. after the death of his father in 1979. The name of Dinkar Mura Mandavekar was entered in the record of right in pursuance of M.E.No.6533, he being the eldest son of deceased Mura. There is no reason or ground to state that he did not inherit the tenancy right after the death of his father and I hold that Dinkar Mura Mandavekar and the petitioners, too, inherited the tenancy after the death of Mura Mandvekar-Pawar. The Maharashtra Revenue Tribunal has proceeded on the assumption that the claim of Dinkar Mura Mandvekar as tenant in the

suit land was made after the tiller's day, i.e. after the death of his father in 1977 and, therefore, he ought to have exercised the right to purchase under section 32-O of the Act. In the facts of this case, in my opinion, the provisions contained in section 32-O have no application at all.

6. Sub-section (6) of Section 32-G states that if any land which, by or under the provisions of any of the Land Tenures Abolition Acts referred to in Schedule III to this Act, is regranted to the holder thereof on condition that it was not transferable, such condition shall not be deemed to affect the right of any person holding such land on lease created before the regrant and such person shall as a tenant be deemed to have purchased the land under this section, as if the condition that it was not transferable was not the condition of regrant. The learned counsel for the parties did not dispute this position in law and have fairly stated that if Dinkar Mura Mandavekar is held to have had inherited the tenancy in the suit land after the death of his father, the petitioners are entitled to purchase the land under section 32-G. In view thereof and considering the settled position in law, I need not elaborate on this issue any more. Thus, the

petitioners are entitled to purchase the land under section 32-G, being the legal heirs and representatives of Mura Mandvekar-Pawar who was admittedly in possession on 1.4.1957 as tenant. All the authorities below have committed manifest error in holding that Dinkar Mura Mandavekar did not inherit the tenancy after the death of Mura Mandavekar-Pawr and he ought to have exercised his right of purchase under section 32-O of the Act.

7. That takes me to consider the next submission of Mr Shah, learned counsel for respondent no.1, that since the legal heirs of Govind Gopal Kale were not brought on record after his death, the entire proceedings stood abated not only against the heirs of Govind Gopal Kale, but also against respondent no.1 - Vishnu Kale. I perused the entire record. It is not clear as to when exactly Govind Kale died though in the order of the Tribunal, a date 27.1.1969 is mentioned as the date of his death. Admittedly, one Mr Ramchandra Kulkarni was the power of attorney of both the landlords, i.e. Vishnu Kale and Govind Kale and he was representing them in these proceedings right from inception. The Tahasildar has recorded his statement in these proceedings on 22.11.1983 wherein he had stated that whereabouts of

Govind Kale are not known and since last few years he is missing. Neither he nor Vishnu Kale informed the Tahasildar before whom the proceedings were pending for about 20 years that Govind Gopal Kale was dead. The proceedings sheet (Roznama) dated 3.2.1988 of the tribunal show that the notice in the revision was issued to the power of Attorney Ramchandra Kulkarni and it had returned unserved with the remark "dead". In view thereof, Dinkar Mura Mandvekar made an attempt to serve Govind Kale and at that stage for the first time Dinkar Mura Mandavekar came to know that he (Govind Kale) was also dead. Even before me, neither Mr Nighot, learned counsel for the petitioners nor Mr Shah, learned counsel for respondent-landlord could state as to when Govind Kale died. They could not state as to on what basis the Maharashtra Revenue Tribunal in its order has mentioned the date 27.1.1969 as the date of his death. However, from the statement of Ramchandra Kulkarni, dated 22.11.1983, recorded by the Tahsildar, the date 27.1.1969 cannot be treated as correct date of Govind Gopal Kale’s death. It appears that thereafter Dinkar Mura Mandavekar filed an application seeking permission to publish notice and such permission was granted by the Tribunal. The notice was accordingly published mentioning the names

of all the heirs of Govind Kale on 20.9.1988. The Roznama further reveals that one Advocate Limaye had appeared for the heirs of Govind Kale - deceased landlord. However, he did not file his appearance and hence nobody represented them at the stage of final hearing of the revision. The record further reveals that ultimately the application dated 18.11.1988 filed by Dinkar Mura Mandavekar for bringing them on record was rejected. In the present petition the heirs of deceased Govind Kale were added as respondents and they were also served. However, none of the heirs of Govind Kale has came forward to oppose this petition. It is against this backdrop I find no merit in the contention of Mr Shah, learned counsel for the respondents, that the entire proceedings abated against both the landlords. Moreover, I find no reason as to why and how the proceeding would abate against Vishnu Kale. It appears that neither Govind Kale nor his heirs were ever interested in the present proceedings and, therefore, they never appeared in these proceeding. In any case, the present proceedings cannot be stated to have abated against the landlord Vishnu Kale since he contested the proceedings throughout and was represented before all the authorities. The relationship between Vishnu Kale and Govind Kale is

not clear. It is also not clear that what were the shares of both of them in the suit property. In the circumstances, the submission of Mr Shah, learned counsel for the respondent-landlord, is without any merit and deserve to be rejected. In the result the petitioners succeed. All the orders passed by the authorities below are set aside. The matter is remanded to the Tahasildar for determination of the purchase price under section 32-G of the Act. The Tahasidlar shall fix the purchase price as expeditiously as possible and preferably within a period of one year from the date of receipt of this order after following the procedure contemplated under the provisions of the Act and the rules thereunder.

. Rule is made absolute. No order as to costs.

(D.B.BHOSALE,J.)

jwp2884-89

HIGH COURT
CIVILI APPELLATE SIDE
WRIT PETITION NO.2884 OF 1989

Date of Judgment:

August 18, 2006.

For approval and signature

THE HON'BLE MR.JUSTICE D.B.BHOSALE.

1. Whether Reporters of Local Papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur Aurangabad or Goa offices?